

MONTANA LEGISLATIVE HISTORY

Chapter 257 19 93

Bill H _____ S 350

Original bill & history 1 c

H. Committee on Agriculture

Hearing Date(s) 3-4 ☒ c

3-9 ☒ c

_____ ☐ c

_____ ☐ c

Date Out _____ ☐ c

S. Committee on Agriculture

Hearing Date(s) 2-15 ☒ c

_____ ☐ c

_____ ☐ c

_____ ☐ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

2/23 TRANSMITTED TO HOUSE
 2/23 REFERRED TO EDUCATION & CULTURAL RESOURCES
 2/23 FIRST READING
 3/02 REREFERRED TO SCHOOL FUNDING SELECT COMMITTEE
 3/03 FISCAL NOTE RECEIVED
 3/04 FISCAL NOTE PRINTED
 3/16 HEARING
 3/17 COMMITTEE REPORT—BILL CONCURRED AND
 REREFERRED TO EDUCATION & CULTURAL RESOURCES
 3/24 HEARING
 3/29 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3/30 2ND READING CONCURRED 93 6
 4/01 3RD READING CONCURRED 91 8
 RETURNED TO SENATE WITH AMENDMENTS
 4/06 2ND READING AMENDMENTS CONCURRED 50 0
 4/07 3RD READING AMENDMENTS CONCURRED 49 0
 4/13 SIGNED BY PRESIDENT
 4/15 SIGNED BY SPEAKER
 4/16 TRANSMITTED TO GOVERNOR
 4/21 SIGNED BY GOVERNOR
 CHAPTER NUMBER 466
 EFFECTIVE DATE: 01/01/94—SECTION 5
 EFFECTIVE DATE: 07/01/94—SECTIONS 1, 3, 4, & 6-9

SB 349 INTRODUCED BY CHRISTIAENS, ET AL.
 ESTABLISH A 10-DAY PERIOD WITHIN WHICH A TENANT IS REQUIRED TO
 ANSWER A LANDLORD'S COMPLAINT AND SUMMONS IN A LANDLORD'S
 ACTION FOR UNLAWFUL DETAINER

2/10 INTRODUCED
 2/10 REFERRED TO JUDICIARY
 2/10 FIRST READING
 2/18 HEARING
 2/22 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/23 2ND READING PASSED 49 0
 2/24 3RD READING PASSED 48 0

TRANSMITTED TO HOUSE
 3/01 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 3/01 FIRST READING
 3/10 HEARING
 3/10 COMMITTEE REPORT—BILL CONCURRED
 3/10 PLACED ON CONSENT CALENDAR
 3/12 3RD READING CONCURRED 90 6

RETURNED TO SENATE
 3/16 SIGNED BY PRESIDENT
 3/16 SIGNED BY SPEAKER
 3/17 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 138
 EFFECTIVE DATE: 10/01/93

SB 350 INTRODUCED BY FORRESTER, ET AL.
 INCREASE MAXIMUM ADMINISTRATIVE FEE CHARGED BY AN IRRIGATION
 DISTRICT

2/10 INTRODUCED
 2/10 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
 2/10 FIRST READING
 2/15 HEARING
 2/16 COMMITTEE REPORT—BILL PASSED

2/19 2ND READING PASSED 50 0
 2/20 3RD READING PASSED 49 1
 TRANSMITTED TO HOUSE
 2/23 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
 2/23 FIRST READING
 3/04 HEARING
 3/11 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3/13 2ND READING CONCURRED 92 5
 3/16 3RD READING CONCURRED 92 7
 RETURNED TO SENATE WITH AMENDMENTS
 3/19 2ND READING AMENDMENTS CONCURRED 47 0
 3/20 3RD READING AMENDMENTS CONCURRED 41 0
 3/24 SIGNED BY PRESIDENT
 3/26 SIGNED BY SPEAKER
 3/29 TRANSMITTED TO GOVERNOR
 4/01 SIGNED BY GOVERNOR
 CHAPTER NUMBER 257
 EFFECTIVE DATE: 07/01/93

SB 351 INTRODUCED BY WELDON, ET AL.
 PROVIDE FOR NO HEARING IN SUMMARY DISSOLUTION

2/10 INTRODUCED
 2/10 REFERRED TO JUDICIARY
 2/10 FIRST READING
 2/20 HEARING
 2/22 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/23 2ND READING PASSED 49 0
 2/24 3RD READING PASSED 47 1

TRANSMITTED TO HOUSE
 3/01 REFERRED TO JUDICIARY
 3/01 FIRST READING
 3/24 HEARING
 3/26 TABLED IN COMMITTEE

SB 352 INTRODUCED BY KEATING, ET AL.
 EXPAND LIEN ACT TO INCLUDE PSYCHOLOGISTS, SOCIAL WORKERS, AND
 COUNSELORS

2/10 INTRODUCED
 2/10 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
 2/10 FIRST READING
 2/17 HEARING
 2/18 COMMITTEE REPORT—BILL PASSED 50 0
 2/20 2ND READING PASSED 48 0
 2/22 3RD READING PASSED

TRANSMITTED TO HOUSE
 2/23 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 2/23 FIRST READING
 3/15 HEARING
 3/15 COMMITTEE REPORT—BILL CONCURRED AS AMENDED 81 8
 3/27 2ND READING CONCURRED 73 27
 3/30 3RD READING CONCURRED

RETURNED TO SENATE WITH AMENDMENTS
 4/02 2ND READING AMENDMENTS CONCURRED 47 0
 4/03 3RD READING AMENDMENTS CONCURRED 47 0
 4/07 SIGNED BY PRESIDENT
 4/07 SIGNED BY SPEAKER
 4/13 TRANSMITTED TO GOVERNOR

SENATE BILL NO. 350

INTRODUCED BY FORRESTER, MILLS

IN THE SENATE

FEBRUARY 10, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FIRST READING.

FEBRUARY 16, 1993 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

FEBRUARY 18, 1993 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 19, 1993 SECOND READING, DO PASS.

FEBRUARY 20, 1993 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 49; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FIRST READING.

MARCH 11, 1993 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 13, 1993 SECOND READING, CONCURRED IN.

MARCH 16, 1993 THIRD READING, CONCURRED IN.
AYES, 92; NOES, 7.

MARCH 17, 1993 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 18, 1993 RECEIVED FROM HOUSE.

MARCH 19, 1993 SECOND READING, AMENDMENTS

MARCH 20, 1993

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 550
2 INTRODUCED BY Forrester
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MAXIMUM
5 ADMINISTRATIVE FEE THAT MAY BE CHARGED BY AN IRRIGATION
6 DISTRICT; CLARIFYING THAT THE ADMINISTRATIVE FEE IS IN
7 ADDITION TO THE ANNUAL TAX LEVY; AMENDING SECTIONS 85-7-2103
8 AND 85-7-2104, MCA; AND PROVIDING AN EFFECTIVE DATE."

10 WHEREAS, the development of subdivided farm units has
11 greatly increased irrigation district costs to administer
12 water, including the costs of splitting irrigated acres,
13 establishing and operating new land and water accounts,
14 revising maps and assessment lists, administering water in
15 brief duration to multiple users who share a common point of
16 delivery, instructing small tract landowners on policies and
17 procedures, and settling disputes related to water delivery
18 and accounting; and

19 WHEREAS, the \$25 maximum administrative charge on
20 irrigated property is not enough to make the delivery of
21 water to a small acreage economically feasible; and

22 WHEREAS, the \$25 maximum administrative charge was
23 established in 1979, with no consideration given to the
24 future rate of inflation.

25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 **Section 1.** Section 85-7-2103, MCA, is amended to read:

3 *85-7-2103. All irrigable lands chargeable alike. (1)
4 All irrigable lands in each irrigation district and all
5 lands in each subdistrict of the district, except those
6 lands that are included within the district because of the
7 exchange or substitution of water under the provisions of
8 85-7-1912, shall pay at the same rate for all purposes for
9 which the lands are charged, except as otherwise provided by
10 law. There may be an administrative charge of \$5 to \$25 \$75
11 against each separately owned tract of land regardless of
12 its size, as provided in 85-7-2104. The administrative
13 charge is in addition to the annual tax levied under
14 85-7-2104.

15 (2) Whenever water used for the irrigation of any lands
16 within an irrigation district or subdistrict is obtained by
17 pumping to different elevations, the cost of maintenance,
18 operation, and pumping to each separate elevation shall must
19 be apportioned and levied upon the lands lying under the
20 ditch or ditches running from that particular elevation, in
21 a manner ~~as may be~~ determined fair and equitable by the
22 board of commissioners after considering the facts in each
23 case. This apportionment must be made by the board of
24 commissioners and included each year in the assessment
25 provided for by 85-7-2104. The amount of the assessment for

25

1 maintenance, operation, and pumping of water to each
 2 separate elevation, whenever there are different elevations,
 3 must be determined by the board in a manner and upon notice
 4 to the persons interested in the district or subdistrict as
 5 the board in its rules may provide.

6 (3) Whenever a contract has been made with the United
 7 States, the lands within the district or of a subdistrict if
 8 the contract substantially benefits the subdistrict, whether
 9 originally included or later annexed to the district or
 10 subdistrict, ~~shall~~ must pay in accordance with the federal
 11 reclamation laws and the public notices, orders, and
 12 regulations issued under the reclamation laws and in
 13 compliance with any contracts made by the United States with
 14 the owners of the lands and in compliance with the contract
 15 between the districts and the United States.

16 (4) Whenever a contract has been made with the state of
 17 Montana, the lands within the district or of a subdistrict
 18 if the contract substantially benefits the subdistrict,
 19 whether originally included or later annexed to the district
 20 or subdistrict, ~~shall~~ must pay in accordance with state laws
 21 and public notices and rules issued under the laws and in
 22 compliance with any contract made by the state with the
 23 owners of the lands and in compliance with the contract
 24 between the district and the state.

25 (5) Whenever the works necessary for the completed

1 project are constructed progressively over a period of years
 2 and whenever a portion of the lands within the district are
 3 or can be irrigated 1 year or more before the completion of
 4 the entire project, those lands irrigated or that can be
 5 irrigated through the built portion of the project ~~shall~~
 6 must pay for the cost of operating that portion of the
 7 project serving them with irrigation water and ~~must~~ also
 8 ~~shall~~ pay the portion of the interest charges as its
 9 irrigable area bears to the irrigable area of the entire
 10 project.

11 (6) Whenever lands have appurtenant thereto to the land
 12 a partial water right or partial rights in a system of
 13 irrigation other than that of the district or subdistrict,
 14 the amounts payable must be equitably apportioned.

15 (7) Whenever the owners of a portion of the lands
 16 within an irrigation district choose to install a gravity
 17 system to irrigate those lands, the cost of constructing the
 18 gravity system must be apportioned among and levied upon the
 19 lands irrigated by the gravity system in a manner determined
 20 to be equitable by the board. The levy must be included each
 21 year in the assessment charged under 85-7-2104."

22 **Section 2.** Section 85-7-2104, MCA, is amended to read:

23 "85-7-2104. Annual tax levy -- apportionment when
 24 tracts divided. (1) (a) On or before the second Monday in
 25 July each year, the board of commissioners of each

1 irrigation district organized under parts 1 and 15 shall
2 ascertain:

3 (i) the total amount required to be raised in that year
4 for the general administrative expenses of the district,
5 including the cost of maintenance and repairs; and

6 (ii) the total amount to be raised that year for
7 interest on and principal of the outstanding bonded or other
8 indebtedness of the district for which bonds of the district
9 have not been deposited with the United States as provided
10 in 85-7-1906.

11 (b) The board shall levy against each 40-acre tract or
12 fractional lot, as designated by United States government
13 survey, or platted lot if land is subdivided in lots and
14 blocks (or where land is owned in less than 40-acre tracts
15 or in less than the platted lot, against each tract) of land
16 in the district, that portion of the respective total
17 amounts to be raised which the total irrigable area of any
18 tract or lot bears to the total irrigable area of the lands
19 in the district, so that each acre of irrigable land in the
20 district ~~must-be~~ is assessed and required to pay the same
21 amount as every other acre of irrigable land ~~therein in the~~
22 district, unless otherwise specifically provided by the
23 board. The board may charge \$5 to \$25 against each
24 separately owned tract of land, regardless of its size, and
25 the administrative charge authorized in 85-7-2103(1).

1 (c) Indebtedness under subsection (1) includes debt
2 incurred under any contract between the district and the
3 United States but excludes any indebtedness incurred by the
4 district on behalf of a subdistrict.

5 (2) (a) On or before the second Monday in July each
6 year, the board of commissioners of each irrigation district
7 organized under parts 1 and 15 for which a subdistrict has
8 been created pursuant to 85-7-404 shall determine the total
9 amount to be raised that year for interest and principal
10 payments on the outstanding bonded or other indebtedness of
11 the district incurred on behalf of the subdistrict.

12 (b) The board shall levy against each 40-acre tract or
13 fractional lot, as designated by United States government
14 survey, or platted lot if land is subdivided in lots and
15 blocks (or where land is owned in less than 40-acre tracts
16 or in less than the platted lot, against each tract) in the
17 subdistrict, the portion of the total amount to be raised
18 apportioned according to the ratio of the total irrigable
19 area of the tract or lot to the total irrigable area of the
20 lands in the subdistrict, so that each acre of irrigable
21 land in the subdistrict is assessed and required to pay the
22 same amount as every other acre of irrigable land in the
23 subdistrict, unless otherwise specifically provided by the
24 board. The board may charge \$5 to \$25 against each
25 separately owned tract or lot of land, regardless of its

size, and the administrative charge authorized in
85-7-2103(1).

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against his the owner's portion of the tract or subdivision and have the land discharged from the lien. ~~In no event shall the~~ The charge against any separately owned tract of land may not be less than \$5."

NEW SECTION. **Section 3.** Effective date. [This act] is effective July 1, 1993.

-End-

SENATE BILLS STATUS SHEET

AGRICULTURE COMMITTEE

BILL NUMBER	ENTERED COMMITTEE	CONSIDERED	OUT OF COMMITTEE	<u>DP</u> DO PASS	<u>DNP</u> DO NOT PASS	<u>DPAA</u> DO PASS AS AMENDED	<u>DNPA</u> DO NOT PASS AS AMENDED
SB 30	1/4	1/6	1/8	X			
SB 48	1/4	1/13	1/13 TABLED				
SB 54	1/4	1/11	1/11 TABLED				
SB 59	1/4	1/11	1/8 TABLED				
SB 73	1/4	1/15, 1/20	1/20			X	
SB 85	1/6	1/11	1/11			X	
SB 88	1/6	1/11	1/11	X			
SB 98	1/8	1/11, 1/13	1/13	X			
SB 254	1/26	1/29, 2/3			X		
SB 279	2/1	2/5, 2/10	2/10			X	
SB 328	2/8	2/10	2/10	X			
SB 350	2/10	2/15	2/15	X			

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on February 15, 1993, at 1 p.m.

ROLL CALL

Members Present:

Sen. Jack "Doc" Rea, Chair (D)
Sen. Francis Koehnke, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Tom Beck (R)
Sen. Betty Bruski-Maus (D)
Sen. Jim Burnett (R)
Sen. Gerry Devlin (R)
Sen. Gary Forrester (D)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 350, SB 369
Executive Action: SB 350, HB 104, SB 369

HEARING ON SB 350

Opening Statement by Sponsor:

Sen. Forrester, District 49, said SB 350 would raise the administrative fees in an irrigation district and charge the patrons of that district. He said the main intent of SB 350 was outlined on page 1. Sen. Forrester also referred to changes on page 2, line 10 changing "\$25" to "\$75", page 2, lines 12-14, and pages 7 line 1-2.

Proponents' Testimony:

Jo Brunner, Executive Director of Montana Water Resources Association, said that Sen. Forrester introduced SB 350 at the Association's request. She said their primary concern was contained in the first "whereas" of the bill. She said the costs of administering small tracts of land could be as much as for large tracts of land. It has been difficult to keep up with costs to administer services required for these water demands. The Association recognized that these increases are in addition to the annual tax levy and would be for administrative costs.

Mr. Max Maddox, Chinook Division Irrigation Association, supported SB 350. He gave an example when a ditch rider gets a small order for water. They required a 3-day notification to divert water to the land and there is a 24-hour shutoff notice requirement. Often these small tracts need the water for a short period of time, usually less than one day. This represents a lot of extra time and record keeping for ditch riders.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Devlin asked Jo Brunner about the number of acres in a small parcel. Ms. Brunner said in the past, 80 acres was the smallest tract. Now however, these 80 acre tracts are sometimes divided into 1, 5, or 10 acre tracts. She said the administrative costs are the same regardless of the tract size. The commissioners set the amount that will be charged for each tract.

Sen. Koehnke said the title looked like it would increase the maximum administrative fee, but on the next page it looks like both the maximum and minimum fees are set at \$75. Ms. Brunner answered a \$5 minimum already existed and that SB 350 would only change the maximum limit.

Sen. Aklestad asked if there would be an increase in revenue with smaller tracts because there would now be more 5 and 10 acre tracts rather than one 80 acre tract. Ms. Brunner said the delivery of small tracts was always more than the actual turnout. For example the 80 acres might have only one actual diversion, and then multiple diversions need to be added which have not been included in administrative charges. Every time there is a vote everyone has to be notified about the administrative charges for this increase. She said it may seem that the district should be receiving more funds but in reality that it does not. The cost for notifying for small and large tracts is the same. The district wants to be able to adjust charges to meet the exact costs.

Sen. Pipinich asked about page 5, line 23, and page 6, line 24 which did not contain the change of \$25 to \$75. Ms. Brunner

responded this section related to taxes and not administrative fees and therefore should not be changed.

Sen. Koehnke asked why there was a 3-day notice, when in his district they only require 24 hours. Ms. Brunner said irrigation districts set their own regulations. She referred the answer to Mr. Maddox. Mr. Maddox said the 3 days referred to the actual delivery time it takes to get the water from the reservoir to the irrigators in his irrigation district. This rule applies only to Mr. Maddox's district.

Sen. Beck asked if the administrative costs were the same for all members of the irrigation district. Mr. Maddox replied no, that large users will use the water for 5 days and the ditch rider would not have to return immediately to perform more services. He said a small acreage will use the water for only one day and then turn off water at the diversion point. The unused water then runs down the ditch and the ditch rider has to make provisions to take the water out of the ditch or have someone else "pick it up" it so that it does not cause problems.

Sen. Beck asked if the ditch rider checked to see if a user, ordering water for 5 days in a row, received their allotment. Mr. Maddox said the user would tell the ditch rider if their daily allotment was not received.

Sen. Beck asked if the increase in fees to \$75 would affect large acreage as well as small, and if that measure was targeted for small tracts. Mr. Maddox replied that his understanding was that the fees would be set by local boards on an individual basis. Sen. Beck asked if the charge was per lot or per unit and not per acre. Mr. Maddox said yes, that was his understanding.

Sen. Burnett said his irrigation district was based on shares and an assessment was made according to shares so that the larger land owner paid more than someone with less land. He asked if SB 350 would affect his situation. Mr. Maddox replied no, SB 350 deals only with administrative costs.

Sen. Aklestad said a landowner could have \$35 per acre in fees and tax before he received any water assessments. Sen. Forrester said this might be true but land use patterns have greatly changed. Even on a small tract of land this price would be a "bargain" for the water even at the \$75 maximum. He said water could not be delivered for less, even using the maximum fee, which he assumed would not be charged all of the time.

Sen. Aklestad asked if Sen. Forrester had considered doubling the maximum instead of tripling it. Sen. Forrester said he belonged to a irrigation district and SB 350 would affect him as well.

Sen. Beck asked if \$50 would be an acceptable charge. Jo Brunner said \$125 was originally requested and SB 350 only applies to

irrigation districts, it does not apply to small water user organizations. A \$50 fee would only cover part of the costs.

Sen. Halligan asked if irrigation districts were run by non-profit boards and if there would be have to be a special meeting to notify membership of any fee changes. Jo Brunner said the action could be taken at a public meeting, unless the decision surpassed a certain dollar amount.

Sen. Aklestad asked how the irrigator would be affected under Sen. Beck's property tax bill. Ms. Brunner said that Sen. Beck could probably answer that better and they are not asking for those costs. Sen. Beck explained most people wanted to include delivery systems. Ms. Brunner said she thought it would be a minute dollar amount.

Closing by Sponsor:

Sen. Forrester said he agreed to carry the bill only if the maximum fee was reduced from \$125 to \$75. He said there was a difference between administrative costs and the taxes paid per acre on larger tracts of land. SB 350 would deal with ditch rider and bookkeeping costs. Irrigation districts are no different than any other water district strapped for cash with rising costs. SB 350 would help the irrigation districts meet their obligations. He urged a Do Pass.

HEARING ON SB 369

Opening Statement by Sponsor:

Sen. Rea, District 38, said SB 369 was an act to allow the sale and use of certain pesticides for up to 6 years after distribution from the registrant. For example, he used a mosquito spray for 17 years which was voluntarily discontinued by the company. Under present statute, these pesticides can only be used for 2 years. A large back order of products that have been used for a number of years still exist. These products have been approved for use by the Environmental Protection Agency (EPA). If not used before the 2 year deadline they must be disposed of as hazardous waste. SB 369 would ask approval for use of these products as if they were still on the market. Sen. Rea said there were 2 amendments. One deals with following the annotated code on labeling directions to use the pesticide without negligence. The other amendment would provide for an immediate effective date.

Proponents' Testimony:

Leo Giacometto, Director of Department of Agriculture, supported SB 369 as written but had not seen the amendments.

Motion/Vote: Sen. Halligan MOVED the amendment SB 369 have an immediate effective date. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 350

Motion/Vote: Sen. Pipinich MOVED SB 350 DO PASS. The motion carried with Senators Beck, Aklestad and Koehnke voting No.

EXECUTIVE ACTION ON HB 104

Discussion:

Doug Sternberg, Legislative Council, handed out amendments to HB 104 and explained them.

Motion/Vote:

Sen. Pipinich MOVED THE AMENDMENTS TO HB 104 (Exhibit #5). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

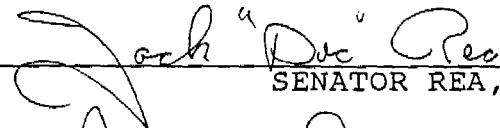
Sen. Devlin MOVED AMENDMENTS to HB 104 (Exhibit #6). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Sen. Halligan MOVED HB 104 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: Meeting adjourned at 1:52 p.m.


SENATOR REA, Chair


DAVID MARTIN, Secretary

JR/dm

Abstract

DATE 2-15-93

F08

Attach to each day's minutes

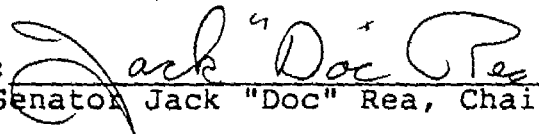
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1993

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 350 (first reading copy -- white), respectfully report that Senate Bill No. 350 do pass.

Signed:


Senator Jack "Doc" Rea, Chair

COMMITTEE--HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ----- DATE READ

SB0350	FORRESTER, GARY	2/23	3/04	INCREASE IRRIGATION DISTRICT ADMINISTRATIVE CHARGE	CONCUR AS AMENDED 3/9	VOTE: 15-0	3/11
SB0369	REA, JACK	2/23	3/04	ALLOW SALE OF CERTAIN PESTICIDES FOR 6 YEARS FROM TERMINATION OF DISTRIB	CONCUR	3/4 VOTE: 16-0	3/05
SB0383	GROSFIELD, LORENTS	2/23	3/04	WATER LEASING STUDY AMENDMENTS	CONCUR	3/9 VOTE: 15-0	3/10
SB0393	FRITZ, HARRY	3/01	3/09	MODEL SCHOOL INTEGRATED PEST & PESTICIDE MANAGEMENT SAFETY PROGRAM ACT	CONCUR	3/9 VOTE: 15-0	3/10

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 4, 1993, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 383, SB 369, SB 350
Executive Action: SB 369, SB 259, (SB 350 - Delayed)

HEARING ON SB 383

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, said SB 383, which
deals with water leases, water leasing study, and use of river
restoration funds for water leasing, was amended in the Senate
where the number of streams authorized for water leasing was 10,

drafted this session which would provide more money for the program. He said it would take some of the federal funds received by the Department of Natural Resource and add them to the river restoration program. SEN. GROSFIELD then explained the study of the water leasing program.

HEARING ON SB 369

Opening Statement by Sponsor:

SEN. JACK REA, SD 38, Three Forks, explained SB 369 which deals with the registration and sale of certain pesticides in the state. He thanked them for their attention and urged the committee to concur in SB 369.

Proponents' Testimony:

Ralph Peck, Deputy Director, Department of Agriculture, testified for Leo Giacometto, Director. EXHIBIT 3

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. REA closed.

REP. BARNETT was asked to carry SB 369 on the House floor.

HEARING ON SB 350

Opening Statement by Sponsor:

SEN. FORRESTER, SD 49, Billings, explained that SB 350 raises the maximum administrative fee that may be charged by an irrigation district to \$75. The current maximum fee of \$25 was established in 1979 and has not been increased since that time. He also presented the committee with amendments. EXHIBIT 4

Proponents' Testimony:

Jerry Nypen, Montana Water Resource Association, said that the Association supports the amendments presented by SEN. FORRESTER. He said that the Association wanted to change the language to read that the board may charge an additional administrative charge of \$5 to \$75. They don't want a duplication of charges. At the present time, there has been some misinterpretation of existing law.

Jay Chamberlain, manager of the East Irrigation District in

Dillon and the Montana Water Resource Association, stated that he called the Hamilton Irrigation District to see how SB 350 would affect areas that are being heavily subdivided. He was told that in the last year eight farm operations were split creating 40 to 60 new parcels of land, and with these new parcels, water must be designated to them. It is the responsibility of the irrigation district to determine where that water is going to go within those subdivisions. The current maximum administrative fee of \$25 is not enough to cover the costs. SB 350 will help recoup the costs that irrigation districts are forced to deal with.

Max Maddox, member of the Montana Water Users Association and the Chinook Irrigation Division Association, explained that SB 350 would help alleviate the costs associated with subdivisions. He urged the committee to concur in SB 350.

Dean Hoff, Director of the Montana Resource Association, explained that with subdivisions, irrigation districts are required to deliver water for more individuals instead of the previous owner. He said that the costs have gone up to deliver the water to these subdivisions owners.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SPRING asked Mr. Hoff about how he administers the water to these subdivisions. Mr. Hoff replied that he takes the water and rotates the use of the water to meet the needs of the subdivision owners.

REP. STOVALL asked Mr. Hoff how he determines what to charge the individuals. Mr. Hoff said that all users are assessed. It does not matter how large the subdivision is, the first acre costs \$70, after that, it is based on a specific per acre charge for the number total number of acres you own. Everyone is charged the same amount per acre.

Closing by Sponsor:

SEN. FORRESTER explained that he amended SB 350 before he agreed to sponsor the bill. He stated the irrigation district wanted a fee increase to \$125, however, he did not want to go above the \$75 maximum administrative fee.

REP. ROSE was assigned to carry SB 350 on the House floor.

EXECUTIVE ACTION ON SB 369

Motion: REP. MASON MOVED SB 369 TO BE CONCURRED IN. The motion carried unanimously with REP. LARSON AND REP. SCHWINDEN voting by proxy.

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/4/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

A

A

Amdnment to SB350

Page 5 lines 23, also page 6, line 24 Insert

The Board may charge an additional administrative charge of \$5.00 to
\$75.00 against each.....

Delete The Board may charge \$5.00 to \$25.00 against each

Page ~~5~~ Line 24 and 25, also ⁵⁰ page 7 line 1 & 2

Delete and the administrative charge authorized in 85-7-21034(1)

Senate Members
JERRY C. AKLESTAD
ICE CHAIRMAN
LWYN GAGE
KE HALLIGAN
J. LYNCH

Executive Director
ROBERT B. PERSON

Deputy Director
DAVID D. BOHYER

Secretary
JETH FURBUSH
ANCI ZALUTSKY
TA GIBSON



Montana Legislative Council

Research and Reference Services

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EXHIBIT 350
DATE 3/4/93
SB 350

House Members
RED MENAHAN
CHAIRMAN
JAN BROWN
MARY LOU PETERSON
JIM RICE

Researchers
CONNIE ERICKSON
SUSAN FOX
TOM GOMEZ
SHERI S. HEFFELFINGER
JEFF MARTIN
ANDREA MERRILL

March 4, 1993

TO: Rep. Vernon Keller, Chairman, House Committee on Agriculture, Livestock,
and Irrigation
Members of the House Committee on Agriculture, Livestock, and Irrigation

FROM: Dave Bohyer *Dave B.*

RE: Senate Bill No. 259

This memorandum responds to the Committee's request for additional information regarding Senate Bill No. 259, an act clarifying that an agricultural property owner who petitions for the relocation of an overhead utility line shall pay the full cost of relocating the line.

BACKGROUND

Senate Bill No. 259 (SB 259) was introduced at the request of Senate Judiciary Committee on the recommendation of the Code Commissioner. The Code Commissioner's recommendation was made because the language contained in section 69-4-404, MCA, was ruled unconstitutional by the Montana Supreme Court in *McTaggart v. Montana Power Company*, 184 Mont. 329 (1979).

The facts in McTaggart are, essentially, that McTaggart had previously been compensated for an easement to the Montana Power Company (MPC) for the location of an overhead utility line. Subsequently, McTaggart legally petitioned the court, seeking to have MPC relocate the utility line for the purpose of McTaggart installing a center pivot irrigation system. McTaggart's petition claimed that installing the irrigation system was a public use of water and that therefore the legal theory of eminent domain applied. The District Court agreed with McTaggart, ordered relocation of the line, and divided the cost of the

relocation equally between the parties as provided in section 69-4-404, MCA. The MPC appealed.

On appeal, the Supreme Court affirmed in part and reversed in part:

. . . (1) more efficient use of water and irrigation of farmland is public use for which right of eminent domain will lie, but (2) where land is condemned and utility has paid for easement once, it is unfair that it be required to pay for easement again, and thus landowner must bear cost of relocation of power line. (McTaggart at 330)

. . . Section 69-4-404, MCA, provides that the costs of relocation shall be divided equally between the landowner and the owner of the power line. Appellant [MPC] argues that the statute does not provide for just compensation. Appellant maintains that the principle of just compensation requires that the owner of condemned property be made whole for all of the damages sustained and that there must be full compensation. Appellant contends that 50 percent compensation is only half of the compensation properly due appellant.

With this proposition we fully agree.

Article II, Section 29, of the 1972 Montana Constitution, states:

"Private property shall not be taken or damaged for public use without just compensation *to the full extent of the loss* having been first made to or paid into the court for the owner." (McTaggart at 336)

. . . Here, there is just compensation in one sense; the utility is compensated for the easement which it already has. The statutes require that the landowner offer land upon which the utility may plot an alternative route for its power line. It is nonetheless a fact, however, that the utility must also bear half the cost of relocation. Where the land is condemned and the utility has paid for the easement once, we think it unfair that it be required to pay for the easement again. The relocation of the power line comes at the insistence of the landowner, and it is he who should properly bear the costs of relocation. We find therefore that section 69-4-404, MCA, does not provide for just compensation, and we declare it unconstitutional.

Accordingly, we . . . order that respondent [McTaggart] pay the entire cost of relocating the overhead utility line. (McTaggart at 337)

Because the Montana Supreme Court ruled section 69-4-404, MCA, unconstitutional, the existing language in the Montana Code Annotated conflicts with case law. Consequently, the Code Commissioner, as required under section 1-11-204, MCA, recommended legislation accommodating the court's ruling. Section 1-11-204, MCA, states, in part:

- 1-11-204. Duties of code commissioner.** (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and, as provided in 5-11-210, submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:
- (a) eliminate archaic or outdated laws;
 - (b) eliminate obsolete or redundant wording of laws;
 - (c) eliminate duplications in law and any laws repealed directly or by implication;
 - (d) clarify existing laws;
 - (e) correct errors and inconsistencies within the laws. . . . (emphasis added)

SUMMARY OF SB 259

As drafted, SB 259 incorporates the court's decision in McTaggart.

Under the revised version of section 69-4-404, MCA, the costs of relocating an overhead utility line as ordered under section 69-4-403, MCA, must be paid by the owner of the land.

Under section 69-4-403, MCA, a court may, after a hearing and finding evidence of substantial improvement in agricultural productivity, order the owner of an overhead utility line to relocate the line. If so ordered, the owner of the overhead utility must move the utility line to land to be provided by the owner of the land at no cost to the owner of the line. (See section 69-4-402, MCA.) Under McTaggart, the cost of the relocation must be paid by the landowner, not the owner of the utility line.

It is important to note that SB 259 and all of Title 69, chapter 4, part 4, MCA, apply only to the court-ordered relocation of an overhead utility line on the basis of substantial improvement in agricultural productivity. More specifically, section 69-4-403, MCA,

Memorandum to the House Committee on
Agriculture, Livestock, and Irrigation
March 4, 1993
Page 4

provides for the taking, by eminent domain, of property for a public use. Concomitantly, Article II, section 29, of the 1972 Montana Constitution and the court's ruling in McTaggart require that the taking of property be accompanied by "just compensation to the full extent of the loss".

Neither SB 259 nor Title 69, chapter 4, part 4, MCA, applies to any other type of easement, right-of-way, or property right.

OPTIONS AVAILABLE TO THE COMMITTEE

Under the duties and responsibilities of the Code Commissioner provided in section 1-11-204, MCA, SB 259 directly and succinctly clarifies existing law and corrects errors and inconsistencies within the law.

The options available to the Committee exceed those available to the Code Commissioner. For example, at page 1, line 15, of the bill, the following language could be added following "land.":

If the relocation of an overhead utility line does not result from a petition filed under 69-4-402 and an order to relocate the overhead utility line issued under 69-4-403, the costs of relocating the line must be paid as otherwise provided by law.

Although the optional language is redundant with language contained in section 69-4-404, MCA, it may provide some sense of additional protection to those persons who see opportunity for confusion, mischief, or other undesirable consequences.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 350
DATE March 4 1993 SPONSOR(S) J. Forrester

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JERRY NYDEN	MWRP	X	
Peter G. Rebish	East B. IRR Dillon	X	
Jan Henderson	Chick Canyon water Sep.	X	
Jo B. Munn	East B. IRR Dillon	✓	
Mary M. M. M. M.	Chick Canyon Div. Irr Assoc.	X	
Don Hall	B. B. M. F.	X	
Herb M. M. M.	Tongue River Water Users	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 9, 1993, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: Rep. Jody Bird

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 393, SB 334
Executive Action: SB 350, SB 383, SB 393

HEARING ON SB 393

Opening Statement by Sponsor:

SEN. HARRY FRITZ, SD 28, Missoula, stated that the intent of SB 393 is to allow the Department of Agriculture to inform the schools in Montana of the health and environmental dangers of pesticides.

projects. Mr. Gingery also said that out-of-state companies would be considered in the bidding process.

REP. SCHWINDEN asked Mr. Gingery about the study conducted by the department on this issue. He wondered about the liability of the contractors collecting hazardous wastes. Mr. Gingery said that the liability deals with products that would go to a hazardous waste site out-of-state. When one puts toxic chemical containers in an approved hazardous waste site, that person would have liability for the lifetime of the site. Mr. Gingery added that the department believes there is a way to work out the liability issue dealing with hazardous waste sites--the companies would have to be willing to assume all or at least a portion of the liability.

REP. ROSE asked Mr. Giacometto if he could give an example of where a person would be restricted from using a chemical. Mr. Giacometto replied that he could not give a particular example. The department has the authority to say that a farmer should not use chemicals at a particular time because it may pose a problem. Therefore, the department is required to regulate the use of chemicals.

REP. LARSON asked Mr. Gingery if the EPA was mandating this program for Montana or requesting that we take care of the disposal of these chemicals. Mr. Gingery replied that at the present time, the department working under more than one EPA mandate.

Closing by Sponsor:

SEN. BECK said he had received an amendment from Mr. Giacometto, which is on page 23 line 19. The intent of the bill was to add \$15 for a license renewal. What it says in the bill is an annual \$15 assessment, however, the license is for a 5-year period. The amendment would strike the word, "annual". SEN. BECK stated that this bill is good for the environment and urged the committee to pass SB 334.

REP. KELLER was asked to carry SB 334 on the House floor.

EXECUTIVE ACTION ON SB 350

Motion: REP. BACHINI MOVED SB 350 BE CONCURRED IN for the purpose of discussion.

Discussion: Mr. Bohyer explained an amendment by SEN. FORRESTER.
EXHIBIT 8

Motion/Vote: REP. BACHINI moved to adopt the amendment. The motion carried unanimously.

Motion/Vote: REP. BACHINI MOVED SB 350 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 383

Motion: REP. ANDERSON MOVED SB 383 BE CONCURRED IN.

Discussion: REP. ROSE said at the present time, they were utilizing two streams out of 10 and wondered why the bill was amended to 20 streams. SEN. GROSFIELD said that the original bill eliminated any reference to the number of streams. The Senate Agriculture Committee thought that was a little broad which was why 20 streams was suggested. Originally there were five streams, the last legislative session amended it to 10.

Motion/Vote: SB 383 BE CONCURRED IN. The motion carried unanimously.

REP. LARSON requested the committee defer executive action on SB 334 until a later date.

EXECUTIVE ACTION ON SB 393

Motion/Vote: REP. BACHINI MOVED SB 393 BE CONCURRED IN. The motion carried unanimously.

ADJOURNMENT

Adjournment: 4:40 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE STANDING COMMITTEE REPORT

March 10, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 350 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Vern Keller, Chair

And, that such amendments read:

Carried by: Rep. Rose

1. Page 5, line 23.

Following: "may"

Insert: "also"

2. Page 5, lines 23 and 24.

Following: "charge" on line 23

Strike: the remainder of line 23 through "and" on line 24

3. Page 6, line 24.

Following: "may"

Insert: "also"

4. Page 6, line 24 through page 7, line 1.

Following: "charge" on page 6, line 24

Strike: the remainder of line 24

through "and" on page 7, line 1

-END-

Committee Vote:

Yes 15, No 0.

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